

REMARKS

This is a full and timely response to the outstanding nonfinal Office Action mailed June 17, 2004. Reconsideration and allowance of the application and presently pending claims 27-78, as amended, are respectfully requested.

1. Applicants Response to First Office Action

Applicants response to the first Office Action dated May 7, 2003 addressed the objection to Figure 1 by submitting a proposed amended drawing. Applicants presume that the proposed amended drawing was accepted by the Examiner since the objection to Figure 1 was not maintained in the present Office Action. However, if this assumption is incorrect, Applicants request that the Examiner advise them of any remaining deficiencies to Figure 1 in the next Office Action.

The Specification was also objected to in the first Office Action as allegedly not containing a description for "a short range radio transmitter (13)." Applicants response addressed the objection by submitting an amendment to the Specification. Applicants presume that the Specification amendment was accepted by the Examiner since the above-described objection to the Specification was not maintained in the present Office Action. However, if this assumption is incorrect, Applicants request that the Examiner advise them accordingly in the next Office Action.

2. Present Status of Patent Application

Upon entry of the amendments in this response, claims 27-78 remain pending in the present application. More specifically, claims 29, 48, 49, 55, 66 and 67 are directly amended and claim 78 is added. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

3. Objection to the Specification

The Specification is objected to in the present Office Action as allegedly incorrectly identifying the warning device with reference numeral "32" (at page 5, lines 16-17 and 19). Applicants amendment to the Specification corrects the reference numeral to "34" as suggested by the Examiner. Accordingly, Applicants respectfully

request withdrawal of the objection. Applicants appreciate the Examiner's detailed review of the Specification and thank the Examiner for the suggested correction.

4. Indication of Allowable Subject Matter

Applicants acknowledge the Examiner's allowance of 68-77, as noted in page 6 of the Office Action. Applicants appreciate the Examiner's allowance of these claims.

Applicants also acknowledge the Examiner's conclusion that the subject matter of claims 39-55, 57 and 64-65 is allowable, as noted in page 6 of the Office Action. However, Applicants have not amended these claims 39-55, 57 and 64-65 in this response because the Applicants believe, for the reasons detailed below, that the parent claims from which claims 39-55, 57 and 64-65 depend are allowable over the cited art.

5. Response to Rejection of Claims 27-33, 36, 58-59 and 61-63 Under 35 U.S.C. §102(b)

In the Office Action, claims 27-33, 36, 58-59 and 61-63 stand rejected under 35 U.S.C. §102(b) as allegedly being unpatentable by *Everett, Jr. et al.* (U.S. Patent 4,857,912), hereinafter *Everett*. For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

a. Independent Claim 27

Applicants respectfully submit that independent claim 27 is allowable for at least the reason that *Everett* does not disclose, teach, or suggest the feature of an "indicator unit being configured to emit an indicator signal to the person to ***indicate the presence of the image capture device in the vicinity of the person***" (emphasis added) as recited in claim 27.

Applicants believe that *Everett* does not disclose, teach, or suggest using an indicator unit being configured to emit an indicator signal to the person to indicate the presence of the image capture device in the vicinity of the person. However, the Office Action, at page 2, alleges that *Everett* discloses "an indicator unit in the form of a transceiver (96) installed in or on the image capture device (figure 1) being configured

to emit an indicator signal to the person to indicate the presence of the image capture device in the vicinity of the person (col. 10, lines 30-46)." Applicants respectfully traverse this conclusion for the reasons detailed hereinbelow.

At most, *Everett* discloses an "image capture device" 80 and a transceiver 96 (for example, Col. 10, lines 6-46 and figure 1). However, at issue is whether *Everett* actually discloses a device to "***indicate the presence of the image capture device*** in the vicinity of the person" (emphasis added) as recited in claim 27. The Office Action cites Col. 10, lines 30-46 of *Everett* in its allegation that the above-described feature of claim 27 is disclosed by *Everett*.

The teachings of *Everett* must be considered on the whole. The Office Action may not properly pick and choose elements and then conclude that the selected elements have a relationship to each other unless that relationship is actually disclosed in the cited reference. Accordingly, Applicants assert that Col. 10, lines 30-46 of *Everett* must be considered in context of what *Everett* actually teaches. That is, the paragraph from Col. 10, lines 6-29 should be also considered when interpreting what *Everett* teaches in Col. 10, lines 30-46.

For the convenience of the Examiner, the relevant portion of *Everett* from Col. 10, lines 6-46 is repeated below.

In the security assessment mode, each of the intrusion detection sensors 12, 14, 16, 18 and 20 are powered up. The ultrasonic motion detector system 30 is not powered nor is the video surveillance and motion detector camera 80. By leaving the detector system 30 and camera 80 unpowered, valuable battery power on the sentry robot may be conserved. In the security assessment mode, the local central processing unit 28 gathers information from the intrusion detection sensors 12, 14, 16, 18 and 20 which furnish binary outputs to central processing unit 28. The outputs from each of these sensors is, therefore, either "on" or "off". If the output of any of these detector sensors is "on", the local central processing unit 28 assigns a weighting factor for that particular sensor. Local central processing unit 28 then sums the weighting factors assigned for each detector sensor that was in the "on" condition. Thereby, a preliminary composite "threat" assessment is made. The higher the value of the sum computed, the greater the possibility that an intruder has been detected. This sum value along with data indicating the condition, i.e. either "on" or "off", of each sensor is then transmitted to the host central processing unit 94 via the radio transmission link 96, 98, 100, and 102.

The host central processing unit 94 then decodes this transmitted information and updates the status display on display console 97. Host

central processing unit 94 then compares the composite threat assessment information transmitted from local central processing unit 28 with a threshold value. If the threat is greater than the threshold value, the host central processing unit 94 sends a command to the local central processing unit 28 via the transmission link to activate the ultrasonic motion detector system 30 and the video camera and microphone subsystem 80 and 84, respectively. The local central processing unit 28 retrieves the range data acquired from the ultrasonic motion detector system 30 and sends this data along with the infrared motion detector system sensor data to the host processing unit 94 via the transmission link.

Applicants first note that *Everett* discloses at Col. 10, lines 6-10 that “the security assessment mode, each of the intrusion detection sensors 12, 14, 16, 18 and 20 are powered up. The ultrasonic motion detector system 30 is not powered nor is the video surveillance and motion detector camera 80.” *Everett* then discloses that “the local central processing unit 28 gathers information from the intrusion detection sensors 12, 14, 16, 18 and 20 which furnish binary outputs to central processing unit 28” at Col. 10, lines 13-16.

Then, at Col. 10, lines 30-46, *Everett* discloses that the “data indicating the condition, ... of each sensor is then transmitted to the host central processing unit 94. The host central processing unit 94 then decodes this transmitted information and updates the status display on display console 97.” At issue here is whether the disclosed *Everett* detection sensors 12, 14, 16, 18 and 20 are configured to indicate “*the presence of the image capture device* in the vicinity of the person” (emphasis added) as recited in claim 27.

Detection sensor 12 is a hearing sensor (see for example, *Everett* figure 1). *Everett* does not disclose, teach or suggest anywhere that the detection sensor 12 indicates the presence of the image capture device.

Detection sensor 14 is a vibration sensor (see for example, *Everett* figure 1). *Everett* does not disclose, teach or suggest anywhere that the detection sensor 14 indicates the presence of the image capture device.

Detection sensor 16 is an infrared motion detector system (see for example, *Everett* figure 1). *Everett* does not disclose, teach or suggest anywhere that the detection sensor 16 indicates the presence of the image capture device.

Detection sensor 18 is a microwave motion detector system (see for example, *Everett* figure 1). *Everett* does not disclose, teach or suggest anywhere that the detection sensor 18 indicates the presence of the image capture device.

Detection sensor 20 is an optical motion detector system (see for example, *Everett* figure 1). *Everett* does not disclose, teach or suggest anywhere that the detection sensor 20 indicates the presence of the image capture device.

Therefore, *Everett* does not disclose, teach or suggest anywhere that the sensors 12, 14, 16, 18 and 20 “indicates *the presence of the image capture device* in the vicinity of the person” (emphasis added) as recited in claim 27.

Next, *Everett* must be examined to identify any other types of detectors that are configured to indicate the presence of the image capture device in the vicinity of the person. Nowhere in *Everett* is there any disclosure whatsoever of any type of detection device or system that is configured to “indicate *the presence of the image capture device* in the vicinity of the person” (emphasis added) as recited in claim 27.

Because there is no disclosure whatsoever of any type of detection device or system that is configured to “indicate *the presence of the image capture device* in the vicinity of the person” (emphasis added) as recited in claim 27, *Everett* does not anticipate claim 27. Accordingly, the rejection should be withdrawn.

b. Independent Claim 61

Applicants respectfully submit that independent claim 61 is allowable for at least the reason that *Everett* does not disclose, teach, or suggest the feature of “emitting an indicator signal that *indicates the presence of the image capture device* in the vicinity of the person” (emphasis added) as recited in claim 61.

Applicants believe that *Everett* does not disclose, teach, or suggest emitting an indicator signal that indicates the presence of the image capture device in the vicinity of the person. However, the Office Action, at page 2, alleges that “the claimed method steps are inherent in the product structure.” Applicants respectfully traverse this rejection for the reasons detailed hereinbelow.

First, the rejection itself is legally insufficient to reject the claim (and claims 62-63) simply because features are allegedly “inherent” in a claimed structure. MPEP section 706.02(j) indicates that “it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be

given fair opportunity to reply. ... It is important that the written record clearly explaining the rational for decisions made during prosecution of the application.” Applicants assert that the rejection of claim 61 (and claims 62-63) is improper since the basis of the rejection is not articulated, and locations of the alleged teachings in *Everett* are not identified. That is, the Applicants are unable to reply to the Office Action allegation because the Applicants do not know precisely what features are rejected, and where such features are allegedly disclosed in *Everett*.

Accordingly, the rejection of claim 61 (and claims 62-63) is improper, and for at least this reason alone, the rejection should be withdrawn. However, if a rejection under 35 U.S.C. §102(b) as allegedly being unpatentable by *Everett* is maintained, Applicants request clarification as to precisely what features are rejected, and where such features are allegedly disclosed in *Everett* in the next Office Action.

Furthermore, since the basis of the rejection of claim 61 (and claims 62-63) was not articulated in this Office Action, the next Office Action ***cannot properly be made a final rejection***. MPEP section 706.02(j) indicates that “it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. ... It is important that the written record clearly explaining the rational for decisions made during prosecution of the application.” That is, Applicants should have at least one opportunity to fairly respond to a rejection under 35 U.S.C. §102(b) as allegedly being unpatentable by *Everett*, which includes the right as a matter of law to amend claim 61 (or claims 62-63) to overcome a properly articulated rejection based upon *Everett*.

Second, MPEP §2136.02 clearly indicates that the “REFERENCE MUST ITSELF CONTAIN THE SUBEJCT MATTER RELIED ON IN THE REJECTION” (printed in bold font in the MPEP). Applicants believe that *Everett* does not disclose anywhere the feature of “emitting an indicator signal that ***indicates the presence of the image capture device*** in the vicinity of the person” (emphasis added) as recited in claim 61. The Examiner is respectfully referred to the arguments above for allowability of claim 27 which clearly demonstrate that *Everett* does not disclose the recited features of claim 61. However, if the Office Action is to properly maintain a rejection under 35 U.S.C. §102(b) using *Everett*, the alleged features should actually be taught somewhere in *Everett*. Accordingly, the rejection of claim 61 (and claims 62-63) as presently stated

in this Office Action is improper, and for at least this reason alone, the rejection should be withdrawn.

Finally, assuming *arguendo*, that had the Office Action made a proper rejection under 35 U.S.C. §102(b) of claim 61 as allegedly being unpatentable by *Everett*, Applicants assert that *Everett* does not disclose, teach, or suggest the feature of “emitting an indicator signal that ***indicates the presence of the image capture device*** in the vicinity of the person” (emphasis added) as recited in claim 61. Again, the Examiner is respectfully referred to the arguments above for allowability of claim 27 which clearly demonstrate that *Everett* does not disclose the recited features of claim 61. Because there is no disclosure whatsoever of any type of detection device or system of “emitting an indicator signal that ***indicates the presence of the image capture device*** in the vicinity of the person” (emphasis added) as recited in claim 61, *Everett* does not anticipate claim 61. Accordingly, the rejection should be withdrawn for at least this reason alone.

c. Dependent Claims 28-33, 36, 58-59, 62 and 63

Because independent claim 27 is allowable over the cited art of record, dependent claims 28-33, 36, 58-59 (which depend from independent claim 27) are allowable as a matter of law for at least the reason that the dependent claims 28-33, 36, 58-59 contain all features/elements of independent claim 27. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Similarly, because independent claim 61 is allowable over the cited art of record, dependent claims 62 and 63 (which depend from independent claim 61) are allowable as a matter of law for at least the reason that the dependent claims 62 and 63 contain all features/elements/steps of independent claim 61. Accordingly, the rejection to these claims should be withdrawn.

6. Response to Rejection of Claims 34-35, 37-38, 60 and 66-67 Under 35 U.S.C. §103

In the Office Action, claims 34-35, 37-38, 60 and 66-67 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Everett*, in view of knowledge apparently known by one skilled in the art. Additionally, claim 56 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Everett*, in view of *Schieke et al.* (U.S. Patent Application 2002/0075134).

Because independent claim 27 is allowable over the cited art of record, dependent claims 34-35, 37-38 and 60 (which depend from independent claim 27) are allowable as a matter of law for at least the reason that the dependent claims 34-35, 37-38 and 60 contain all features/elements of independent claim 27. Similarly, because independent claim 61 is allowable over the cited art of record, dependent claims 66 and 67 (which depend from independent claim 61) are allowable as a matter of law for at least the reason that the dependent claims 66 and 67 contain all features/elements/steps of independent claim 61. Accordingly, the rejection to these claims should be withdrawn.

7. Amendment to Claims 29, 48, 49, 55, 66 and 67

The amendment to claims 29, 48, 49, 55, 66 and 67 merely present the claims in better form for issuance by correcting minor typographical errors and do not narrow the scope of claims 29, 48, 49, 55, 66 and 67 in any manner. Therefore, Applicants request the Examiner to enter and allow the above new claims.

8. Newly Added Claim 78

New claim 78 is based on subject matter that is explicit and/or inherent within the description of the specification and/or the drawings. Applicants submit that no new matter has been added in the new claim 78, and that new claim 78 is allowable over the cited prior art. Therefore, Applicants request the Examiner to enter and allow the above new claim.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now 27-78 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Raymond W. Armentrout', is written over a horizontal line.

Raymond W. Armentrout
Reg. No. 45,866